IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 3050 of 2000

For Approval and Signature:

HONOURABLE MR.JUSTICE JAYANT PATEL

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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NEW INDIA ASSURANCE CO. LTD. - Appellant(s)
Versus
BABUBHAI MITHUBHAI BHANUSHALI & 3 - Defendant(s)

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Appearance :
MS LILU K BHAYA for Appellant(s) : 1,
MR SK PATEL for Defendant(s) : 1,
NOTICE UNSERVED for Defendant(s) : 2 - 4.

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CORAM : HONOURABLE MR.JUSTICE JAYANT PATEL

Date : 15/10/2007

ORAL JUDGMENT

1. The short facts of the case appear to be that the claimant filed claim petition for recovery

of the compensation of Rs.3,94,500/- under the Motor Vehicle Act. Below the said claim petition, the claimant also moved an application Ex. 6 for interim compensation under Section 140 of the Act. The Tribunal exercised the power for interim compensation under Section 163A of the Act and directed the Insurance Company to deposit the amount of Rs.1,84,500/- with the interest at the rate of 12% p.a. and with the further direction for permitting withdrawal etc. It is under these circumstances the present appeal before this Court by the Insurance Company. It deserves to be recorded that the said order for alleged interim compensation under Section 163A of the Act was made subject to final order, which may be passed by the Tribunal.

2. Heard Mr.J.B.Shah with Ms.Bhaya, learned Counsel for the appellant and Mr.S.K.Patel, learned Counsel for the original claimant(s).

3. It appears that the facts are not in dispute so far as it relates to passing the order for interim award by the Tribunal under Section 163A

of the Act. As such, as per the scheme of the Act there is no question of exercise of the power under Section 163A of the Act while passing interim award for interim compensation and the exercise of the power under Section 163A of the Act would be at the time when the final order is to be passed under the claim petition. There are two courses open to the claimant; either to file application under Section 166 of the Act or under Section 163A of the Act, but both the applications are to be decided finally. If the interim matter is to be considered for passing interim award for interim compensation, it is only under Section 140 of the Act. Similar issue came to be considered by the Division Bench of this Court in First Appeal No.3049 of 2000 decided on 23.1.2003 and the Division Bench had observed at para 6 to 11 as under:-

> *"6. Ms. Lilu Bhaya, learned advocate for the appellant - Insurance Company has contended that an award under Section 163 A of the Act cannot be regarded to be an interim award and that the same is not*

subject to the out come in the award under Section 166 of the Act and, therefore, the amount awarded under Section 163 A of the Act is not subject to the adjustment against the award that may be passed in the petition filed under Section 166 of the Act. It is further contended that the petition under Section 163 A of the Act is independent and substantive and there cannot be petition under Section 166 and also 163 A of the Act. There could be either of it. In this regard, reliance has been placed on the decision in the case of Oriental Insurance Company Ltd. Vs. Hansrajbhai V. Kodala & Others, reported in JT 2001(4) SC 477.

7. It is stated by Mr. H.S.Tolia, learned advocate for the respondents that he would withdraw the petition under Section 166 of the Act, pending before the claims Tribunal and, therefore, the order passed under Section 163 A of the Act need not be interfered with as the same has been passed considering the FIR, Panchanama, Inquest Panchanama, R.C.Book, Insurance

Police and the age of the deceased.

8. In view of the principle laid down in the case of Oriental Insurance Company Ltd. Vs. Hansarajbhai V. Kodala & Others (supra), the above contention raised by the appellant - Insurance Company has to be accepted.

9. In the premises aforesaid, in view of the legal position as above the impugned judgement and award is liable to be quashed and set aside.

10. The impugned award under Section 163 A of the Act is hereby quashed and set aside. Appeal is allowed with no order as to costs. R & P shall be returned to the claims Tribunal immediately. An amount of Rs.1,84,000/- deposited by the Appellant - Insurance Company with the Registry of this Court be returned /refunded to the appellant - Insurance Company.

11. At this juncture, it is stated by Mr. Tolia, learned advocate for the

respondents that it is apprehended that his application under Section 163 A of the Act may not be considered on merits by the claims Tribunal in view of the above order.

It would be open to the claimants to proceed with the application either under Section 163 A or 166 of the Act before the claims Tribunal."

4. The same will be the situation in the present case and as the matter is covered by the above referred decision of the Division Bench of this Court, no further discussion may be required.
5. In the result, the impugned award passed by the Tribunal under Section 163A of the Act is hereby quashed and set aside.
6. The appeal is allowed with no order as to costs. The amount deposited by the appellant Insurance Company with this Court or the Tribunal, as the case may be, shall be refunded to the appellant Insurance Company. It is clarified that the merits of the claim petition shall remain open and it would be open to the claimant to proceed

with the main claim petition in accordance with law. The Tribunal shall decide the claim petition as early as possible, preferably within a period of six months from the date of receipt of the order of this Court.

15.10.2007 **(Jayant Patel, J.)**

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